

March 15, 2006

Bob Jeffrey, Air Quality Specialist
Air Quality Policy and Planning Section
Montana Department of Environmental Quality
1520 E. Sixth Ave.
PO Box 200901
Helena, MT 59620-0901

Dear Bob:

RE: Comments Regarding BART Rule

Thank you for your continuing efforts to involve multiple parties in the development of Montana's regional haze program as required by 40 CFR 51.308. Specifically, your work in developing the BART provisions [§308(e)] and proposed rules is appreciated.

Regarding the most recent two stakeholder meetings (#3 and #4), two issues have been raised that would expand the BART requirements beyond what is specified by the federal program [40 CFR 51.308(e)]. Specifically, the minutes of Stakeholders Meeting #4 contain the following comments:

Potential issues include: (1) using PTE to perform modeling, and (2) expanding the BART rule applicability to non-mandatory federal Class I areas. Non-mandatory federal Class I areas in Montana include: Rattlesnake Wilderness; Welcome Creek Wilderness; Lee Metcalf Wilderness; Absaroka-Beartooth Wilderness and Spotted Bear Wilderness.*

(* I assume DEQ meant to refer to "Spotted Bear" as "Great Bear.")

I would like to offer the following comments on the two potential issues as they are being considered as an addition to the federal BART program.

Potential To Emit (PTE)

There are several reasons that including PTE emissions in modeling and, by extension, in the BART determination is wholly inappropriate. To begin, this entire exercise is for the sole purpose of developing and maintaining an air quality program in Montana that, as a minimum, meets applicable federal requirements. That is, this BART program is being implemented due to requirements and changes in federal regulations. In order for Montana to maintain primacy in the air program, it must amend the state

implementation plan [per 40 CFR 51.308(e)] to reflect those federal requirements. The federal requirements, in turn, were crafted to address the directions of Congress.

Given that, the program described by 40 CFR 51, Section 308(e) and Appendix Y specifically deals with the use of “actual” emissions as opposed to “potential to emit” (with the notable exception of defining a “BART-eligible source”). To stray from this clear federal intention requires careful consideration.

Mr. Jim Parker of PPL Montana, and perhaps others, wondered aloud why the federal BART program (§308 and Appendix Y) as published contemplates the use of actual emissions opposed to PTE. DEQ provided a few thoughts as to why this may have been the case and I would like to offer some thoughts as well. Primarily, I believe that the most likely reason EPA chose the “actuals” path is consistency. The use of “actual” emissions is completely consistent with the federal permitting program as a whole. The use of PTE for determining a specific BART control technology is out of character with the entire federal permitting program.

As an explanation, all Montana facilities under discussion are, via BART definitions, existing facilities that are (I believe) “major stationary sources” within the meaning of PSD. Whether such a source needs to undergo a permitting analysis (including a visibility analysis) is based on whether the source has conducted or proposes to conduct an activity that would make it a “major modification” under PSD. A change becomes a “major modification” if the ‘change’ results in a “. . . significant **net emissions increase** . . .” of certain pollutants. The term “significant” is defined in ARM 17.8.801(27)(a) and is effectively the same as found in the federal BART rule at 40 CFR 51.308(e)(ii)(C).

The important issue for this discussion is the term “net emissions increase.” This is defined (in part) below. The definition is taken from ARM 17.8.801(24):

- (a) *“net emissions increase” means the amount by which the sum of the following exceeds zero:*
 - (i) *any increase in **actual emissions** from a particular physical change or change in the method of operation at a stationary source; and*
 - (ii) *any increases or decreases in **actual emissions** at the source that are contemporaneous with the particular change and are otherwise creditable.*
- (b) *An increase or decrease in **actual emissions** is contemporaneous . . .*
- (c) *An increase or decrease in **actual emissions** is creditable . . .*
- (d) *An increase or decrease in **actual emissions** of sulfur dioxide, . . .*
- (e) *An increase or decrease in **actual emissions** is creditable only . . .*
(emphasis added)



As highlighted above, the program is based on actual emissions, not on hypothetical emissions. The point here is not to delve into the intricacies of the PSD permit program, but to demonstrate that the permit program is clearly aimed at increases and decreases in “actual emissions” in determining when a PSD permit is required (for these facilities). As a result, the federal BART program is consistent with the permitting program and relying on actual emissions should be retained in the implementation of BART in Montana.

Regardless of the analysis above, it makes no sense to either conduct an analysis of impacts or analyze candidates for air pollution control equipment based on what could permissibly be emitted versus what is actually emitted. To do so overstates impacts and will also overstate benefits from any applied controls in a manner that is unnecessary. The entire program of developing visibility protection has hinged a great deal on the results of (actual) visibility measurements (via the IMPROVE sites) throughout the 156 mandatory Class I areas. These measurements were not based on potential emissions. DEQ and various agencies have spent considerable effort to develop a “glide path” for each mandatory Class I area. Those glide paths use, as a starting point for analysis, the actual visibility conditions in each Class I area. These actual conditions are, to the extent they have any relationship to the BART-eligible sources, the result of actual emissions, not PTE emissions.

The development of a BART control technology based on PTE will almost certainly lead to phantom “improvements” in visibility, instead of actual or significant improvements. This is not the intended or necessary result of the BART program. It is the goal of that program to “remedy any existing impairment of visibility in mandatory Class I Federal areas” [40 CFR 51.300(a)]. The task of remedying **existing** impairment can only be achieved using “**existing**” (or actual) emission rates. The goal and the modeled emission rate need to be consistent. Any “existing impairment” that may be related to BART-eligible sources can only be due to actual emissions from such sources and not due to the false construct of PTE.

Non-Mandatory Class I Areas

As implied in the previous section, DEQ’s consideration to include non-mandatory areas is also outside of the intended scope of the federal BART program. If indeed the purpose of the proposed rule is to implement BART, then this proposal also vastly exceeds that requirement.

It is best to begin this discussion with what is apparently a significant misconception about the so-called “Class I” areas in question. The areas selected for discussion as reported in the minutes are:

- ♦ Rattlesnake Wilderness;
- ♦ Welcome Creek Wilderness;
- ♦ Lee Metcalf Wilderness;
- ♦ Absaroka-Beartooth Wilderness; and



- ♦ Great Bear Wilderness.

However, it must be noted that **none** of these areas is a Class I area under the PSD program. In other words, these proposed areas of interest not only fail to meet the “mandatory” portion of a Class I area, they also are not designated as “Class I” in the first place. These areas are, in fact, Class II areas.

That fact, by its own weight, suggests that these Class II areas have no logical or proper place to be included in the present BART program analysis. The areas have not been designated by any appropriate air quality agency as attaining the protection status of a Class I area. These areas have been designated Class II areas since the 1977 Amendments to the Federal Clean Air Act and continue that status today. These areas, from a regulatory perspective, enjoy the air quality protection afforded to all Class II areas.

It is noted, of course, that the above areas are wilderness areas. Congress designated Great Bear, Absaroka-Beartooth and Welcome Creek as wilderness in 1978. The Rattlesnake was designated wilderness in 1980 and Lee Metcalf in 1983. (Source: www.wilderness.net.) Following so closely on the heels of the 1977 Clean Air Act Amendments, that same Congress did not designate, but certainly could have designated, these areas as “mandatory,” “Class I,” or subject to the BART program.

These areas may be reclassified from Class II to either Class I or Class III. This would require the agency to follow various procedures outlined in ARM 17.8.808. Those procedures have never been requested, to my knowledge, nor is there any attempt to change those established designations. To ask that these certain Class II areas receive the same consideration as a mandatory Class I area is without merit. Extending visibility protection of a Class II area to the same analysis and requirements of a Class I area has no practical limit. Arguments applicable to these Class II areas could just as easily be extended to any area of the state that is a Class II area. All Class II areas combined account for more than 95% of the entire state land mass, and obviously encompass essentially all of the population and property of the state over which the State has primary jurisdiction.

Changing the regulatory status of Class II wilderness areas, or effectively creating a new “quasi Class I.5” area is clearly not the intent of the federal BART program nor should it be included within regulations designed to implement a specific federal BART program in Montana. Should Montana decide that such a program is desirable, then that (sweeping) program must stand or fall on its own merits, and should be consciously directed by the Legislature, not hidden within requirements clearly outside of federal and Congressional intent in creating the BART program. In addition, any visibility impairment issues specific to those Class II areas, if they exist at all (for which no such demonstration has been made), need to consider all of the contributing sources equally, not just those sources that either constructed or reconstructed between 1962 and 1977 (before the areas in question were even designated as wilderness, much less Class I).



Thank you for the opportunity to provide comments about the proposed rule. Additional specific comments will follow regarding DEQ's Version #3 of the rule. If you have any questions about these comments, please call or e-mail.

Sincerely,
BISON ENGINEERING INC.

A handwritten signature in cursive script that reads "Harold W. Robbins".

Harold W. Robbins
President

